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No. 92-

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

J.M., INDIVIDUALLY,

Petitioner,

- against -

V.C., [redacted],

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO SUPREME COURT OF NEW JERSEY AND MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

CONCERNED WOMEN FOR AMERICA; ABORTION'S AFTERMATH; AMERICAN RIGHTS COALITION, INC.; CATHOLIC WOMEN'S LEAGUE OF NEW ZEALAND INCORPORATED; FEMCARE; FEMINISTS FOR LIFE OF AMERICA; INSTITUTE FOR PREGNANCY LOSS; INTERNATIONAL BLACK WOMEN'S NETWORK; NATIONAL COUNCIL OF CATHOLIC WOMEN; NATIONAL OFFICE OF POST-ABORTION RECONCILIATION AND HEALING; OPEN ARMS; PREGNANCY COUNSELLING SERVICES INCORPORATED; PROFESSIONAL WOMEN'S NETWORK; VICTIMS OF ABORTION NEW ZEALAND INCORPORATED; VICTIM'S OF CHOICE; WOMEN AFFIRMING LIFE; WOMEN EXPLOITED BY ABORTION; WOMEN FOR FAITH AND FAMILY; WOMEN FOR LIFE; WOMEN FOR WOMEN; ACCION FAMILIAR; ALLIANCE FOR LIFE; AMERICAN CENTER FOR LAW AND JUSTICE; AMERICAN FAMILY ASSOCIATION, INC.; APOSTOLATUS UNITE; CENTRO DE INVESTIGACION Y DOCENCIA; CHRISTIAN ADVOCATES SERVING EVANGELISM; COALITIONS FOR AMERICA; DELAWARE LAWYERS FOR LIFE; DELAWARE RIGHT TO LIFE; FAMILY AND YOUTH CONCERN; FAMILY OF THE AMERICAS; FAMILY PROTECTION LOBBY; FREE SPEECH ADVOCATES; FACULTAD DE MEDICINA; HUMAN LIFE FOUNDATION OF NEW ZEALAND; HUMAN LIFE INTERNATIONAL; INSTITUTO DE CIENCIAS FAMILIARES; KNIGHTS OF THE SOUTHERN CROSS; MARCH FOR LIFE; MARCH FOR LIFE EDUCATION AND DEFENSE FUND; NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES; NEW ZEALAND SOCIETY FOR THE PROTECTION OF THE UNBORN CHILD INCORPORATED; PRO-LIFE ACTION LEAGUE; RIGHT TO LIFE LEAGUE OF SOUTHERN CALIFORNIA; ROCKLAND COUNTY CATHOLIC COALITION; SCOTTISH ASSOCIATION FOR NATURAL FAMILY PLANNING; SERVICE AND RESEARCH FOUNDATION OF ASIA ON FAMILY AND CULTURE; SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN; SOCIETY OF ST. VINCENT DE PAUL IN NEW ZEALAND; AND WORLD ORGANIZATION FOR THE FAMILY AS AMICI CURIAE IN SUPPORT OF PETITION

Calum B. Anderson, Esq.
Counsel of Record
(203) 527-1141

COONEY, SCULLY AND DOWLING
Hartford Square North
Ten Columbus Boulevard
Hartford, Connecticut 06106
Attorneys for Amici Curiae

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The amicus curiae, Concerned Women for America; Abortion's Aftermath; American Rights Coalition, Inc.; Catholic Women's League of New Zealand Incorporated; FemCARE; Feminists for Life of America; Institute for Pregnancy Lost; International Black Women's Network; National Council of Catholic Women; National Office of Post-Abortion Reconciliation and Healing; Open ARMS; Pregnancy Counselling Services Incorporated; Professional Women's Network; Victims of Abortion New Zealand Incorporated; Victims of Choice; Women Affirming Life; Women Exploited by Abortion; Women for Faith and Family; Women for Life; Women for Women; Accion Familiar; Alliance for Life; American Center for Law and Justice; American Family Association, Inc.; Apostolatus Unite; Centro de Investigacion Y Docencia; Christian Advocates Serving Evangelism; Coalitions for America; Delaware Lawyers for Life; Delaware Right to Life; Family and Youth Concern; Family of the Americas; Family Protection Lobby; Free Speech Advocates; Facultad de Medicina; Human Life Foundation of New Zealand; Human Life International; Instituto De Ciencias Familiares; Knights of the Southern Cross; March for Life; March for Life Education and Defense Fund; National Institute of Family and Life Advocates; New Zealand Society for the Protection of the Unborn Child Incorporated; Pro-Life Action League; Right to Life League of Southern California; Rockland County Catholic Coalition; Scottish Assocation for Natural Family Planning; Service and Research Foundation of Asia on Family and Culture; Society for the Protection of Unborn Children; Society of St. Vincent de Paul in New Zealand; and World Organization for the Family hereby move the court for leave to file an amici curiae brief in support of the petitioner, J.M. Counsel for petitioner consents to the filing of the brief, but Amici did not obtain consent of the respondent, V.C.'s attorney.

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INTERESTS OF AMICI

CONCERNED WOMEN FOR AMERICA ["CWA"].

CWA is the largest, nonpartisan, politically active women's organization in the United States, representing approximately 600,000 persons, 80% of whom are women. CWA, which was founded in 1979, maintains offices in Washington, D.C.

CWA has more than 600 chapters located in all 50 states. It is an organization that is family oriented and is concerned with preserving an environment in the United States which is conducive to building strong families and raising healthy children. To achieve that end, CWA works to preserve, protect and promote the sanctity of human life among other family issues. CWA women are active on the local and national levels in building strong families and raising healthy children.

CWA believes abortion denigrates women in general and demeans the legitimate and essential role of women as mothers; it contributes to the overall denigration of the dignity of life and has a negative impact upon the human race generally and its self-worth in particular.

ABORTION'S AFTERMATH ["AA"].

AA was founded in 1989 to provide networking support for post-abortion women in New Jersey. This Edison-based organization has ties with over 50 post-abortion support organizations in New Jersey, which in turn have contact with about 5,000 women per year.

AMERICAN CENTER FOR LAW AND JUSTICE

The American Center for Law and Justice is a national public interest law firm, chartered to enter the legal arena on issues of a broad public interest. The American Center has members in all fifty States. Attorneys from every State of the Union have affiliated with the American Center, to assit in the restoration of pro-liberty, pro-life and pro-family values.

On behalf of its members, the American Center calls for an end to the systematic exploitation and victimization of women by the abortion industry, and an end to the holocaust of the destruction of our progeny.

AMERICAN RIGHTS COALITION, INC. ["ARC"].

ARC was incorporated in Tennessee in 1987. ARC assists women with the physical and emotional problems resulting from abortion by referring women to medical, emotional and legal providers for assistance, including bringing malpractice claims against those who injure them through abortions.

ARC receives between five and 100 telephone calls per day. It has compiled data on deaths from legal abortions as reported in newspapers and as uncovered in lawsuits, indicating the extent to which the Federal Center for Disease Control significantly understates the number of deaths attributable to abortions.

ARC's main office is located in Chattanooga, Tennessee.

CATHOLIC WOMEN'S LEAGUE OF NEW ZEALAND INCORPORATED ["CWLNZ"].

First established in 1931, CWLNZ became a national corporation in New Zealand in 1949. CWLNZ is based in each of the six dioceses of New Zealand. At this time, its central office is in Hamilton.

CWLNZ's objects are to unite Catholic women in New Zealand in Christian fellowship in order to enhance the growth of their spiritual, intellectual, family and social life, and to foster mission and charitable works and social action, and, in particular, to provide a means by which the voice of Catholic women in New Zealand may be heard in national and international affairs. CWLNZ

participates in the pastoral life of the church and maintains liaison with parish, diocesan and national organizations. CWLNZ maintains affiliation and cooperation with the World Union of Catholic Women's Organizations. It maintains affiliations with other organizations where and in whatever manner the National Conference agrees is necessary or desirable to further the objects and policy of the CWLNZ. Finally, CWLNZ encourages participation by its members in active roles in ecumenical and community life.

CWLNZ conducts monthly gatherings of Catholic women, performs community welfare action, church activities and mission work for the South Pacific, among other things. It is actively opposed to abortion and supports the protection and sanctity of human life from conception until natural death.

CWLNZ has about 5,000 members from throughout New Zealand.

CHRISTIAN ADVOCATES SERVING EVANGELISM

Christian Advocates Serving Evangelism is a legal defense organization dedicated to protecting, preserving and defending the right to proclaim the Gospel of Jesus Christ in public places.

Amicus is particularly concerned by a disturbing tendency to undermine both cherished First Amendment freedoms and the fundamental right to life in the name of a judge-created "right" to abortion.

COALITIONS FOR AMERICA

COA was incorpoated in 1977 and is headquarted in Washington, D.C.

COA is a grass-roots organizing and lobbying organization that coordinattes activities amongst about 100 organizations nationwide in areas related to social issues, defense and foreign policy, legal and judicial matters, political reform and economic issues. COA takes a pro-life position on the abortion issue.

COA's activities include conducting coalition meetings wherein activities of the many orgnizations with which COA works are coordinated and acitivities, incluidng lobbying efforts, are undertaken on their behalf. COA is not a membership organization and has no members per se.

FEMCARE.

FemCare was founded in 1985 to provide post-abortion support to women in the greater New York metropolitan area. FemCare is headquartered in the Bronx, New York.

In addition to counseling individual women, FemCare provides referrals to other counselors, psychologists and spiritual directors. FemCare also assists in arranging the training of professional post-abortion counselors and psychotherapists and offers resource materials in post-abortion recovery for reference and distribution.

As a result of its work, FemCare has insight into the psychological, physical, social and emotional harm that abortion causes women.

FEMINISTS FOR LIFE OF AMERICA ["FFLA"].

FFLA is a Wisconsin corporation which was formed in 1973 and which actively seeks to continue to promote and expand over a century of effort by feminists toward achieving the goal of a society in which women are empowered to make life-affirming decisions for themselves and their children.

Headquartered in Kansas City, Missouri, FFLA has a total membership of approximately 5,000 nationwide with 47 affiliated chapters throughout the continental United States.

FFLA actively opposes societal pressures, direct and indirect, which would compel, coerce or create pressure upon a woman to abort her child. FFLA has provided the service of gathering and disseminating information concerning abortion that would otherwise not be available to the general public. FFLA, therefore, represents a separate, distinct and unique viewpoint not otherwise represented by any other organization either pro-life or pro-abortion, and in such capacity, is specially situated to present information that would otherwise not be available on the abortion issue.

FFLA has concluded that abortion is actually exploitive of women for many reasons. It is an institution that was created to extend a "right" to a mother to kill her own child because it is easier for a male-dominated society to fabricate such a right than it is to address and correct the underlying problems that perpetuate the exploitive use of women in a society which fails to extend to

women the respect, dignity and commitment that they deserve. The presumption that the decision to take the life of her own child belongs only to a mother is a furtherance of the isolation, stigma and blame that is placed upon women in pregnancies out of wedlock. It perpetuates and worsens the biased view that the pregnancy is "her problem", and not that of the father. It is a grave insult and indignity to women to suggest that a woman's place in the professional world and the workplace is conditioned upon her willingness and ability to kill her own child.

The perspective of FFLA is unique in the context both of abortion and of women's rights.

FREE SPEECH ADVOCATES

Free Speech Advocates is a legal defense project that exists to secure the First Amendment rights to engage in religous witness, peaceful sidewalk counseing, and protest of or conscientious objection to the destructionof unborn human life. Fee Speech Advocates endeavors to assure a proper and competent defense, due process, and all constitutional rights to those who take a stand against abortion.

Free Speech Advocates believes that judicial restraint and fidelity to the Constitution are essential to the presevation of genuine constitutional rgihts. When activist courts announce novel "fundamental rights" in a unprincipled manner, established constitution rights suffer. This is so far a variety reasons: first, judicially created rights dilute the significance of those rights the prople have chosen to embody in the Constitution; second, judicially created righs may actually conflict with or limit existing rights; third, the illegitimate judicial creation of rights produces an atmosphere of reactive hostility to claims of constitutional rights, resulting in an unwillingness of courts to afford proper protection for genuine constitutional rights.

Thus, judicial invention of a "fundamental right to abortion" has led to the dilution of free speech and othe rrights, has directly impaired the right to life and the right of states to enact criminal and medical regulations, and has triggered an understandable backlash that threaens to impair judicial solicitude for legitimate constitutional claims.

Abortion is not a thread in the fabric of liberty or privacy rights. Rather, abortion is a malignant tumor on the body politic.

Free Speech Advocates strongly urges the Court to remove this cancerous growth before it further consumes the flesh and fiber of this nation.

INSTITUTE FOR PREGNANCY LOSS ["IFPL"].

IFPL was founded in 1990 as an independent non-profit corporation. It is an education, research and treatment center dedicated to the study of the impact of human pregnancy loss (miscarriage, stillbirth, induced abortion and adoption). IFPL is particularly interested in the examination and remediation of traumatic abortion and adoption experiences, both of which are volitional in nature.

IFPL has been active in promoting public policies that are based on objective, relevant and current information regarding informed consent, adolescent crisis pregnancies, parental and spousal consultation and abortion and adoption decision-making and outcomes. IFPL provides information to the public and health care professionals on the complex nature of stressful pregnancy loss in general, and the psychological health risks of abortion and adoption in particular. IFPL conducts workshops and offers numerous publications, primarily in the area of the psychological effects of abortion. IFPL also provides intensive treatment for women and men traumatized by pregnancy loss, particularly in the area of impacted grief from either an abortion and/or an adoption experience.

IFPL is currently conducting a major international research project on the comparative effects of pregnancy losses in different cultures.

INTERNATIONAL BLACK WOMEN'S NETWORK ["IBWN"].

IBWN was founded in 1990 and has a membership of approximately 1,000 in the United States.

IBWN is a Christ-centered organization founded to address the needs of black women, especially in parenting and job training. The network is specifically interested in strengthening the family life of the black family and, in this context, IBWN has a special interest in the issue of abortion and its negative impact upon the black family in America today.

LEGAL ACTION FOR WOMEN ["LAW"].

LAW was incorporated in Florida in 1988 to assist women who have been physically injured by abortion in making medical malpractice claims against clinics and doctors because of such injuries.

LAW refers women for legal assistance and assembles a data base of the country's most notorious abortionists. LAW operates in all 50 states. It operates two telephone toll-free hotlines for women physically injured by abortion and receives 20 to 25 phone calls per day.

NATIONAL COUNCIL OF CATHOLIC WOMEN ["NCCW"].

NCCW is headquartered in Washington, D.C. It was established in 1920 and federates 8,000 Catholic women's organizations in the United States, which includes national organizations such as Catholic Daughters of the Americas (150,000 members), Daughter of Isabella (100,000 members) and Ladies of Charity (35,000 members). In addition, there are 123 diocesan councils who are members of NCCW as well as 6,690 parish organizations.

In total, NCCW represents between 800,000 and 1,000,000 women nationwide.

NCCW's primary function is to act through affiliated organizations to educate and empower Catholic women in the areas of spirituality, leadership and service. NCCW programs address issues of concern in areas related to church, family, community and legislation. Questions surrounding abortion and the taking of the life of a child without justification, are issues with which NCCW has dealt for many years. NCCW is familiar with facts and information related to abortion. NCCW has acted as advocate on behalf of women and children in state and national legislatures and provides support to women in various circumstances in their lives.

NATIONAL OFFICE OF POST-ABORTION RECONCILIATION AND HEALING ["NOPARH"].

NOPARH is a Wisconsin corporation, headquartered in Milwaukee, and was organized in 1990. The purpose of NOPARH

is to organize, educate and execute the international conference, "Healing Visions", which it co-sponsors with Marquette University. NOPARH also consults on the formation of church-based post-abortion healing ministries, including "Project Rachel" which is a post-abortion reconciliation service within the Catholic Church.

NOPARH operates a national post-abortion referral line and publishes an international post-abortion support services directory and provides research and resources on matters of post-abortion aftermath and healing. NOPARH provides networking and acts as a clearing house for clergy and therapists. NOPARH does not have a membership per se, but does have more than 200 regular financial
contributors. Supporters of the group are from across the United States and from all walks and denominations.

OPEN ARMS ["OA"].

OA is an international Christian ministry that was incorporated in the State of Washington in 1986. Its national office is located in Columbia, Missouri and OA has chapters throughout the United States as well as in other countries.

OA is dedicated to bringing hope and healing to anyone suffering from abortion's emotional and spiritual aftermath. OA is primarily made up of people who have personally experienced the tragedy of abortion and who have felt its devastating after-effects.

OA representatives carry out their ministry in several ways. They provide one-on-one confidential counseling through telephone hotlines and through contacts made while speaking or working with other pro-life sources. They sponsor monthly support groups during which participants may share their own personal abortion experiences in a non-threatening atmosphere. OA representatives also conduct a Bible study program specifically geared toward aiding those suffering from an abortion to achieve forgiveness and healing. OA has trained hundreds of individuals for post-abortion counseling and has done substantial research on the various harms caused women by abortion. Finally, OA's representatives engage in public speaking to share the message of hope to those hurting from abortion as well as to educate the church and the public concerning the negative effects of abortion on individuals and society.

PREGNANCY COUNSELLING SERVICES INCORPORATED ["PCSI"].

PCSI is a charitable trust incorporated under the laws of New Zealand. Its principal office is located in Auckland, New Zealand and it has 24 branches throughout the country.

PCSI is involved in counseling women distressed by pregnancy and those suffering from post-abortion stress. Post-abortion stress stems from the guilt and grief associated with the knowledge that the woman has killed a child. PCSI reports that clients frequently report they were deceived at the time of the abortion into thinking that they were not dealing with another human life.

PCSI counsels some 5,000 women annually and of this number, approximately 85% are initially seeking abortions and 15% are suffering from post-abortion stress.

PCSI counsels women that abortion involves the taking of a human life with the result that approximately two-thirds of those initially seeking abortion decide to continue their pregnancies.

PROFESSIONAL WOMEN'S NETWORK ["PWN"].

PWN represents women from a variety of professional and business fields who recognize the sanctity of all human life. PWN members are lawyers, accountants, consultants, teachers, realtors, professors and systems analysts. It has a membership of between 4,000 and 4,500 which is active in pro-life activities.

PWN is considered to be the voice of pro-life professional women and it conducts talks, primarily before college level assemblies, and also on television. PWN conducts a memorial service for those women who have died as the result of abortion.

VICTIMS OF ABORTION NEW ZEALAND INCORPORATED ["VOA"].

VOA was founded in 1989 and incorporated in New Zealand in 1991.

VOA is headquartered in Wellington, New Zealand and has nine branches each of which are staffed by a coordinator and counselors.

VOA is a post-abortion counseling organization for victims of abortion, including women, men, and children of women who

have had abortions. VOA's principal activities are counselling as well as providing information and submissions to Parliament and other groups. Those persons served by VOA have all suffered from the trauma of abortion.

VICTIMS OF CHOICE ["VOC"].

VOC was incorporated about 10 years ago in California. Its offices remain in Vacaville, California.

VOC seeks to provide education, information and counseling to women, primarily those suffering from post-abortion syndrome. VOC's Executive Director travels throughout the United States to train counselors who then counsel women and educate the public on issues arising out of post-abortion syndrome. VOC publishes a manual and produces articles and pamphlets for a readership of between 2 and 3,000. VOC's public education programs include workshops, conferences and seminars conducted throughout the world.

VOC also provides speakers who speak on the subjects of chastity, crisis pregnancy, fetal development, types of abortions, post-abortion syndrome and abortion recovery. VOC specializes in producing post-abortion materials and the training of counselors to assist women who have been harmed by abortion and VOC counsels those suffering the loss of an aborted family member. VOC is also aware of the harm caused to others beside the mother and her aborted child, especially siblings of aborted babies.

VOC provides services to approximately 20 new clients per month in each of its over 100 centers. Currently, VOC is expanding at the rate of approximately two new centers per month.

WOMEN AFFIRMING LIFE ["WAL"].

WAL was founded in 1990 and has its principal office in Boston, Massachusetts. Its membership of between 700 and 1,000 is drawn from 42 states.

WAL's purpose is to voice the commitment of Catholic women in support of women and the dignity of life and motherhood. WAL's purpose is to serve as a national organization of Catholic women committed to upholding the sanctity of each human life from conception to natural death.

WAL seeks to offer a public witness by women in defense of the unborn and unwanted through personal commitment, educational efforts, prayer and home and professional life.

WAL embodies a pro-life women's perspective on the issue of abortion.

WOMEN EXPLOITED BY ABORTION ["WEBA"].

WEBA was founded in 1982 in recognition of the fact that abortion carries with it serious emotional, psychological and physical consequences for women that were being ignored by society. During the 1980's it became apparent that many women felt they had been lied to about abortion and that abortion is not a safe or simple procedure and that pro-abortionists' public statements to that effect had operated to deceive women.

WEBA initially focused on providing support and counseling for women who have had abortions. By 1985, more than 30,000 women had contacted WEBA seeking help. Today, WEBA has chapters throughout the United States and in seven foreign countries. Each day WEBA's headquarters alone receives 50 to 100 telephone calls and numerous letters per day from women who are suffering because of abortion.

In addition to providing post-abortion counseling, WEBA also provides counseling to women in crisis pregnancy situations who may be considering abortion. WEBA provides information and educational materials concerning the true nature of abortion and also practical assistance and final alternatives to abortion. WEBA also works to educate the public about abortion and its damaging effects on women. From their own experiences, WEBA counselors and volunteers understand that the easy availability of abortion creates pressures on women which effectively negate other options in dealing with the problem pregnancy.

WOMEN FOR FAITH AND FAMILY ["WFF"].

WFF, which has its main office in St. Louis, Missouri, was incorporated in 1984. WFF is a Catholic women's organization which educates people on issues important to Catholics including those related to the family and is intended to aid women in their efforts to continually deepen their understanding of the Catholic

faith. WFF is an organization committed to pro-life principles from conception to natural death. WFF specifically rejects the notion that abortion, the deliberate killing of unborn children, is the "right" of any human being, male or female, or of any government.

WFF conducts conferences and produces publications wherein issues of Catholic faith and in support of family issues are enunciated. WFF draws its membership from the United States, United Kingdom, Canada, Australia and Holland. It has approximately 50,000 affiliated women in the U.S. and approximately 10,000 internationally.

WOMEN FOR LIFE (N.Z.), INC. ["WFL"].

WFL is a New Zealand corporation, having been formed in 1978. Its national office is located in Auckland, New Zealand.

WFL defends the rights of the unborn child from conception and supports the right to life of all persons until natural death. WFL supports and encourages women in their role as mothers, recognizing the major contributions made by them in their child-rearing and home-making roles. We believe a mother should have the right to be a full-time homemaker and a mother and that government should take steps to insure that mothers can economically exercise that right. We want to see the family once again actively supported and recognized as the cornerstone of society.

WFL lobbies the government on many issues, from daycare to homepay for mothers who choose to stay at home to care for their children. WFL submits material on pornography, the New Zealand Human Rights Amendment Bill, contraception, sterilization and the Abortion Amendment Bill. WFL presents the chastity-based program, "Learning to Say No, its Your Choice" into high schools, youth groups and parents groups. WFL speaks on abortion, homosexuality, daycare and condom failure. WFL is a Christian organization whose members believe in the sanctity of life, sound moral principles and family life.

WFL has a membership numbering 2,000, which is drawn from Auckland, Hamilton, Wellington, Taranaki, Te Awamutu, Northland, South Island and Palmerstown North in New Zealand.

WOMEN FOR WOMEN ["WFW"].

WFW is a corporation that was formed in Indiana in 1987 to protect and foster respect for the sanctity of human life from the moment of conception until natural death. WFW upholds the Virgin Mary as a role model for women. WFW recognizes the equality of men and women, while acknowledging their differences so as to promote the dignity and value of womanhood. In addition, WFW upholds and propagates the virtue of chastity and recognizes the true nature and essence of the sexual union and natural family planning.

WFW is an educational organization that produces a quarterly newsletter that addresses issues relating to feminism, church and family issues. WFW has a readership of more than 1,500 and although WFW members are primarily Roman Catholic, its membership derives from all denominations from 28 states, Canada, India and the Philippines.

ACCION FAMILIAR ["AF"].

AF is an unincorporated association that was formed in 1979 in Spain in order to help the family with all aspects of problems facing the family today, including, in areas related to legal and moral issues. Its main office is located in Madrid. AF believes that the family is the root of all health and sickness in society. AF promotes family values and supports the position that life cannot be taken by anyone from the moment of conception until natural death. AF believes in the stability of married couples.

AF disseminates information on family issues in national political campaigns, and has proposed an amendment to Spain's abortion law which served to forestall its effectiveness for one year. AF's members appear on television and radio programs, they lecture to school assemblies, and provide information to national senators and congressmen and to international congresses on matters relating to family values.

AF's membership is approximately 15,000 and is drawn from throughout the Spanish nation. Spanish citizens are generally reluctant to be publicly associated with organizations, and consequently AF's support in Spain is far broader than that signified by its membership numbers.

ALLIANCE FOR LIFE ["AFL"].

AFL was formed in Canada in 1972. The corporation's executive office is located in Winnipeg, Manitoba. Its purposes include educating Canadians on matters of human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasis and similar issues affecting human life. AFL provides counseling and referral services to the public with respect to unforeseen pregnancies and post-abortion trauma. AFL provides educational services and materials for its member groups to educate Canadians on human development, human experimentation, reproductive technologies, adoption, abortion, chastity, euthanasia and similar issues affecting human life. It has researched and published articles, pamphlets, and newsletters on issues surrounding the right to life, principally on abortion matters. It presents expert speakers on the issue of abortion, hosts conferences and presents briefs to government and policy-making organs. AFL has a 24 hour toll-free telephone line to counsel women facing inconvenient pregnancies and has produced a one hour television special on unplanned pregnancy and alternatives to abortion. AFL is a coordinating organization for 250 educational pro-life groups throughout Canada.

AMERICAN FAMILY ASSOCIATION, INC. ["AFA"].

AFA is a corporation organized in 1977 with offices in Tupelo, Mississippi. AFA purpose is to be a leader of citizen and church participation to promote traditional American values and to apply the biblical ethic in society.

AFA's local chapters are active in seeking to preserve the lives of unborn children and the physical and emotional health of their mothers.

AFA has approximately 600 local citizen chapters throughout the U.S. which are active in seeking to preserve community integrity through the implementation of public decency laws. It has a subscribers list of more than 885,000 individuals and churches for its monthly newsletter, AFA Journal.

APOSTOLATUS UNITE ["AU"].

AU was organized in 1986 and incorporated in Maryland in 1988. It has its offices in Woodstock, Virginia.

AU is a Catholic lay organization which has as its purpose to bring people to Jesus Christ to experience the Holy Eucharist through the Holy Mother of the Church, in union with the Holy Father.

AU organizes Rosary Congresses which consist of one to seven day prayer gatherings featuring Eucharistic adoration, Marian devotion and sound church teaching. AU conducts evangelization projects throughout the United States by bringing apostolates or organizations together who share the mission for the Holy Eucharist, Mary and the Church. One of AU's main prayer efforts is the World Prayer Movement which is ecumenical and global in nature. A Global Week of Prayer is conducted annually during the first week in October during which participants pray and fast to end abortion. The Global Week of Prayer is conducted in 88 countries and has over 11 million participants.

CENTRO DE INVESTIGACION Y DOCENCIA

Dedicated to the promotion of Natural Family Planning and Defense of human life.

COALITIONS FOR AMERICA ["COA"].

COA was incorporated in 1977 and is headquartered in Washington, D.C.

COA is a grass-roots organizing and lobbying organization that coordinates activities amongst about 100 organizations nationwide in areas related to social issues, defense and foreign policy, legal and judicial matters, political reform and economic issues. COA takes a pro-life position on the abortion issue.

COA's activities include conducting coalition meetings wherein activities of the many organizations with which COA works are coordinated and activities, including lobbying efforts, are undertaken on their behalf. COA is not a membership organization and has no members per se.

DELAWARE LAWYERS FOR LIFE ["DLL"].

DLL is an unincorporated non-denominational association of Delaware lawyers which was formed approximately one year ago.

DLL has a membership of more than 30 Delaware lawyers. The organization is involved in the representation and counseling of primarily single women who are clients of Birthright crisis pregnancy centers. DLL counsels its clients on the legal aspects of single parenthood, custody and visitation. In addition, DLL defends people on First Amendment grounds who are arrested for demonstrating in opposition to abortion.

DLL's members respect and defend the sanctity of human life from the moment of conception.

DELAWARE RIGHT TO LIFE ["DRL"].

DRL is a Delaware corporation with headquarters in Newark, Delaware. The corporation was formed in 1973 in order to educate people regarding issues of life, abortion and euthanasia. DRL supports respect for human life from fertilization until natural death.

DRL's activities include giving speeches, manning display boothes in community presentations, and sponsoring a "life chain" twice per year. DRL sponsors speakers and transportation for the "March for Life." DRL has approximately 1,250 dues paying members, with about twice that number on its newsletter mailing list.

FACULTAD DE MEDICINA

Dedicated to the promotion of Natural Family Planning and defense of human life.

FAMILY AND YOUTH CONCERN ["FYC"].

FYC was established in 1971 in the United Kingdom and currently has a membership of approximately 25,000 people. FYC is headquartered in Milton Keynes, England and has three branches in the United Kingdom.

FYC is concerned with, and has acted as a focus for, the welfare of the family and the issue of abortion which is necessarily an important part of the overall concern for the family. The issues of Aids, abortion, child abuse, divorce, illegitimacy, obscenity, parental responsibility and pedophilia are all of concern to FYC as manifestations of the underlying social dislocation that has been

called the breakdown of the family ecology. FYC's sponsors include many prominent persons from the medical profession, including the former gynecologist to Her Majesty, the Queen.

Among FYC's activities, are the production and promotion of educational booklets and videos intended to enhance the value of the traditional family and the value of human life.

FAMILY OF THE AMERICAS ["FOA"].

FOA was incorporated in 1977 in Missouri. This organization, whose office is in Dunkirk, Maryland, provides educational services to women and families on matters of natural family planning and teaches parents to enable them to remain the primary educators of their children regarding human sexuality.

FOA provides materials and offers training sessions to educate teachers from all over the world in matters of natural family planning. FOA's educational materials have been translated into more than 22 languages.

Although FOA does not have a membership per se, those who work in its programs are drawn from throughout the world.

FAMILY PROTECTION LOBBY ["FPL"].

FPL is an unincorporated association which was formed in Maryland in 1980. The purpose of FPL is to lobby the state legislature on behalf of evangelical churches in Maryland and to represent its membership on Judaeo-Christian issues, including in support of the position that human life begins at conception. FPL provides educational information to its 3,000 active members and to those on its mailing list.

FPL's membership is drawn from a broad spectrum of evangelical and other protestant churches, as well as some Catholic churches.

FREE SPEECH ADVOCATES ["FSA"].

FSA is a legal defense project with an office in Washington, D.C., that exists to secure the First Amendment right to engage in religious witness, peaceful sidewalk counseling, and protest of, or conscientious objection to, the destruction of unborn human life. FSA endeavors to assure a proper and competent defense, due

process and all constitutional rights to those who take a stand against abortion.

FSA and its legal counsel have specialized in litigation in both state and federal courts with regard to various First Amendment issues.

HUMAN LIFE FOUNDATION OF NEW ZEALAND ["HLF"]. (NEW DESCRIPTION)

HLF was formed in Auckland, New Zealand in 1984 and incorporated in 1985 under the Charitable Trusts Act of 1957.

HLF's objects are to promote the saving and protection of human life throughout its whole course from the moment of conception until natural death, with a view to the moral, ethical and mental advancement of the public in order to educate the public as to the need for respecting human life at every stage of its development. Additionally, HLF strives to educate the public to the sacredness and the dignity of natural procreation of human life and of marriage and family life. It endeavors to educate the public on all aspects of human life, its natural procreation (including natural family planning), its development and its natural death. HLF strives to conduct or encourage research into all aspects of human life, its natural procreation (including natural family planning), its development and its natural death, and to disseminate the results of such research. It assists graduate or undergraduate students or others to pursue studies or research at any level in accord with the stated objectives, including the provision of scholarships, bursaries, grants and/or payments of expenses.

In furtherance of its goals, HLF disseminates information and
submissions on issues concerning respect for life and the activities associated with the establishment of life.

HUMAN LIFE INTERNATIONAL

Human Life International, the world's largest pro-life organization, was founded in 1981 by Father Paul Marx, O.S.B., Ph.D. Its mission: bring the pro-life/pro-family messange to countries throughout the world. HLI

INSTITUTO DE CIENCIAS FAMILIARES ["ICF"].

ICF was organized in 1952 and subsequently incorporated in 1985 in Uruguay. ICF's sole purpose is to foster natural family planning. In fulfilling its purpose, it operates doctors' consulting rooms and trains instructors in natural family planning. ICF conducts courses in sexual education and family counseling. It publishes the Family Digest and gives talks on television and radio. ICF conducts its own four year university course in the education of Family Social Workers.

ICF, which has 19 members in its corporation and an additional 50 persons who are employed or who volunteer their services to the organization, operates in Uruguay, Argentina, Paraguay and Brazil.

KNIGHTS OF THE SOUTHERN CROSS ["KOSC"].

KOSC is an unincorporated association formed in 1923 in Auckland, New Zealand and now headquartered in Wellington. It is an association of Catholic laymen active in the lay apostolate and having over 500 members in 16 branches throughout New Zealand.

KOSC is currently engaged in pro-life issues, speaking out against the increasing number of abortions in New Zealand and opposing the pro-euthanasia lobby. KOSC is represented on New Zealand bio-ethics committees. KOSC has been effective in marshalling the public in support of Catholic causes.

Membership in KOSC is broadly based and includes lawyers, doctors and other professional men.

MARCH FOR LIFE ["MFL"].

MFL was incorporated in Washington, D.C. in 1974. The purpose of MFL is to insure the constitutional protection of the right to life of each human being from fertilization. MFL lobbies Congress and testifies on pro-life issues. MFL's Board of Directors has liaison with pro-life groups throughout the United States.

MARCH FOR LIFE EDUCATION AND DEFENSE FUND ["MLEDF"].

This corporation was formed approximately 13 years ago in Washington, D.C. Endeavoring to protect the right to life of each human being in existence from the moment of fertilization and to provide care for the pregnant mother and her pre-born child, MLEDF provides educational materials and conducts seminars student contests and an annual convention and seminars on pro-life issues. MLEDF sponsors the annual March for Life. MLEDF's membership, which is comprised of those who contribute time and/or money, is drawn from across the United States.

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES ["NIFLA"].

NIFLA was recently incorporated in April 1993. It is headquartered in Manassas, Virginia.

NIFLA is not a membership organization. It advises, counsels and gives legal assistance in matters of public interest law, particularly to pro-life crisis pregnancy centers throughout the United States, of which there are approximately 3,000.

NIFLA trains and provides legal assistance to pro-life crisis pregnancy centers to enable them to support women in crisis pregnancies so that they might carry their babies to term. In addition, NIFLA educates the public at large, through speakers and publications, on the issue of abortion and the need to provide compassionate, caring alternatives to abortion.

NEW ZEALAND SOCIETY FOR THE PROTECTION OF THE UNBORN CHILD INCORPORATED ["NZS"].

Incorporated in New Zealand in 1970, NZS has its national office in Wellington.

NZS has more than 28,000 active financial supporters from throughout the country, which is divided into 70 branches.

The objects of NZS are to uphold and promote the intrinsic value of human life and to uphold and protect the rights of unborn children from the time of conception. NZS seeks to uphold and protect the rights of unborn children and it encourages and promotes the study and research, collection and dissemination of the information on the moral, medical, legal, political and social implications of pregnancy and questions associated therewith. NZS informs and educates the public on the need for legal and

other safeguards for protecting and preserving the rights of unborn children. This organization assists and promotes the well-being of mothers and children, both before and after childbirth and, in particular, those who face adverse circumstances. NZS encourages the formation of local constituent societies and coordinates their activities on a national basis. NZS cooperates with government departments, other organizations and individuals engaged in fostering respect for human life, and in promoting social conditions which will provide the best opportunities for mothers and children. NZS subscribes to, and will work purposefully towards, the achievement of the realizable ideal of no abortions within society.

NZS develops systems to educate the public to influence the political process and to insure that adequate law is established and upheld. There is a common desire amongst NZS' membership to have all children protected both before and after birth. Its members come from all walks of life, all age groups, and from throughout New Zealand.

PRO-LIFE ACTION LEAGUE ["PLAL"].

PLAL was formed in 1980 when it was incorporated in Illinois, where it continues to have its main office.

PLAL is a pioneer in pro-life activism. The league uses every media opportunity to get the pro-life message out and to bring the focus of public attention back to the unborn child.

Although PLAL has no actual membership, it does have newsletter subscribers and supporters numbering between 8 and 10,000. PLAL's supporters are drawn from throughout the U.S., Canada, Australia, Ireland and Africa.

PLAL, in its activites, stresses the importance of sidewalk counseling at abortion clinics so as to offer women who are facing crisis pregnancies an alternative to abortion. PLAL contributes articles and letters to the media and has its representatives appear on television and radio programs in support of its positions. It has sponsored three conferences featuring former abortion providers and promoters who have given up the abortion business and are now actively pro-life.

RIGHT TO LIFE LEAGUE OF SOUTHERN CALIFORNIA ["RTLLSC"].

RTLLSC is a California corporation, having been incorporated in 1969. Its offices are located in Pasadena, California.

RTLLSC's purposes are twofold: to provide education and service. RTLLSC's education department handles several hundred speaking requests per year. The league holds an annual educational conference with nearly 500 people in attendance. Its Collegians for Life have clubs on 30 campuses throughout California. In addition, RTLLSC operates 13 Pregnancy Counseling Centers, three medical clinics and four education chapters.

RTLLSC has a membership of approximately 50,000 families drawn mainly from Southern California. In 1992 alone, RTLLSC counseled more than 20,000 women facing unplanned pregnancies.

ROCKLAND COUNTY CATHOLIC COALITION ["RCC"].

This unincorporated association was organized in Rockland County, New York in 1990. RCC is a grass-roots organization seeking to educate, inform and speak out on issues supporting Catholic teachings. RCC has approximately 750 members and a mailing list of 4,000.

RCC conducts meetings at which positions in support of Catholic teachings are taken. RCC members meet with representatives of school boards and publicizes its positions by communicating with the media and provides a speaking panel to various organizations. RCC takes a position in support of the belief that human life begins at conception and human life is entitled to protection and respect from that point in time until natural death.

SCOTTISH ASSOCIATION FOR NATURAL FAMLY PLANNING

Organized in 1979. Dedicated to teaching fertility awareness in schools, colleges and to groups of teachers, nurses, doctors, and seminarians which enables couples to responsibly plan their families. Teaches engaged and married couples about natural family planning.

SERVICE AND RESEARCH FOUNDATION OF ASIA ON FAMILY AND CULTURE

Dedicated to go beyond welfare measures for the well-being of women by promotiong natural family planning.

SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN ["SPUC"].

SPUC is an unincorporated, non-profit English association which was established in 1966. Its national headquarters are in London, England.

SPUC was established to fight against the passage of the Termination of Pregnancy Bill in England, a bill to legalize abortion which was introduced into the House of Commons. SPUC was the first group of its kind in the world. Since its inception, SPUC's role has been two-fold: educational and political. As its title implies, its prime concern is to win legal protection for the unborn child from the moment of conception until birth and so most of its our work is concerned with spreading and extending knowledge of the humanity of the human person before birth and demonstrating that abortion represents the most fundamental abuse of human rights.

SPUC is regarded both inside and outside Parliament as the premier political body fighting against abortion and euthanasia and in performing educational and research work. SPUC has won worldwide recognition particularly with the production of a box-set of fetal models, "How You Began", with accompanying text, which was developed in consultation with experts in obstetrics and gynecology, pediatrics and embryology.

SPUC has 50,000 paying members and 300 local groups throughout the United Kingdom. In addition to its headquarters in London, SPUC has full-time offices in Glasgow, Belfast, Cardiff, Preston, Stockton, Barrow and South London.

SPUC's trained speakers fulfill thousands of speaking engagements each year throughout the country, addressing schools, universities and colleges. In addition, it produces millions of leaflets each year to the general public. SPUC has a number of specialist divisions, including a Handicap Division which comprises people with severe disabilities and their close relatives who campaign and are trained to speak out for the right to life of the disabled both before and after birth. In addition, SPUC has established a national organization called British Victims of Abortion through which women who have had abortions reach out

to others to provide counseling and healing following the abortion experience.

SOCIETY OF ST. VINCENT DE PAUL IN NEW ZEALAND ["SSV"].

Originally formed in France in 1833, SSV was incorporated in New Zealand in 1883.

SSV is an international charitable organization whose members practice Christianity by helping those in need on a person-to-person basis. Although Catholic in origin and character, SSV is open to all who wish to live their faith by loving their neighbors in the person of the needy and by helping people regardless of race, color or creed in all their temporal, personal and spiritual needs.

SSV has approximately 2,500 members (New Zealand's total population is only 3.5 million) drawn from throughout New Zealand. SSV has 25 central and district councils and 169 branches.

WORLD ORGANIZATION FOR THE FAMILY

Dedicated to helping parents to remain primary educators of their children. The organization is a strong defender of human life from the moment of conception and they promote the natural method of family planning.

SUMMARY OF ARGUMENT

This Court should grant certiorari in this case. The Court in *Roe v. Wade*, 410 U.S. 113 (1973) declined to decide the most important issues presented by J.M.'s petition: when does the life of the child begin and, if the child is a human being prior to birth, does the child have constitutional rights.

The question of when the child's life begins was intentionally left to future courts because of the *Roe* Court's

concern about the inadequacy of "man's knowledge" in 1973. This question is before this Court in the first instance and the only criteria for its disposition is the correctness of the court's determination, not principles of *stare decisis*, as though *Roe* had attempted to resolve the inquiry. It is the affirmative duty of this Court to resolve these questions now it is clear they can be resolved.

The legal significance of the fact that the child is a human being who experiences pain has never before been considered. No acceptance of *Roe* is possible until the Court does so.

Because the child is a human being prior to birth, none of the concerns of the Court, expressed in *Roe*, such reliance, and workability, are principles that preclude a decision in the J.M. case that would have a different result than *Roe*, recognizing the child has a right to live. Such a determination would demonstrate that Roe, in reality, was gravely at odds with principles that protect the most basic of human liberties: the welfare of children and their very existence.

Until these central issues are addressed, and the Court can state, with conviction, that all of the issues are correctly decided,

as if before the Court for the first time, it seems unlikely that *Roe* can ever be respected or accepted.

ARGUMENT

I. THE CENTRAL QUESTION PRESENTED IN THIS CASE HAS NEVER BEEN RESOLVED BY THIS COURT, AND IS THEREFORE BEFORE THIS COURT AS AN "ORIGINAL MATTER." THE REQUIREMENTS OF STARE DECISIS FOR OVERRULING ROE V. WADE ARE COMPLETELY SATISFIED BY THE FACTS OF THIS CASE. THE COURT SHOULD GRANT THE WRIT TO DECIDE THE CHILD'S RIGHTS.

As much as anything else, this Court's decision in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. _, 112 S.Ct. 2791 (1992) reaffirmed the central holding in the twenty-year old case of *Roe v. Wade*, 410 u.s. 113 (1973) based upon principles of *stare decisis*.[1] The Joint Opinion of the Court explained:

> We do not need to say whether each of us, had we been Members of the Court when the valuation of the State interest came before it as an original matter, would have concluded, as the *Roe* court did, that its weight is insufficient to justify a ban on abortions prior to viability

[1] Two of the three authors previously expressed views that apparently challenged *Roe's* central holding; see, *Thornburgh v. A.C.O.G.*, 476 U.S. 747, 814, 828 (O'Connor, J., dissenting: "I do, however, remain of the views expressed in my dissent in *Akron*, 462 U.S. at 459-466. The state has compelling interests in ensuring the general health and protecting potential human life, and these interests exist 'throughout pregnancy'"). Justice Kennedy joined in the opinion of the Chief Justice in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), in which he stated: "We do not see why the state's interest in protecting potential human life should come into existence only at the point of viability."

> even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly twenty years of litigation in *Roe's* wake we are satisfied that the immediate question is not the soundness of *Roe's* resolution of the issue, but the precedental force that must be accorded to its holding. *Casey*, 112, S.Ct. at 2817.

The principles of *stare decisis* do not preclude a decision in the case of J.M. v. V.C. which is different from that reached in *Roe* for two separate reasons: [1] the central issue in this case [when does the life of the child begin? and, if the child is a human being prior to birth do those children have constitutional rights?] was not decided in *Roe* at all; and [2] even if the doctrine of *stare decisis* does apply, J.M. v. V.C. meets all of the requirements to overrule *Roe*.

A. THE QUESTION OF WHEN THE LIFE OF A CHILD BEGINS WAS NOT DECIDED BY *ROE* AND IT IS THEREFORE THE DUTY OF THIS COURT TO RESOLVE THE QUESTION. IT WAS THE PROMISE OF *ROE* THAT A SUBSEQUENT COURT WOULD DECIDE THIS ISSUE WHEN "MAN'S KNOWLEDGE" WAS SUFFICIENT.

Roe did not decide when the life of a child begins. The *Roe* Court specifically, and with deliberation, found that in 1973 it was unable to determine that question:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, *at this point in the development of man's*

> *knowledge*, is not in a position to speculate as to the answer. 410 U.S. at 159 (emphasis added).

Roe specifically reserved this particular issue for later Courts by recognizing that "man's knowledge" grows and expands with new information and greater appreciation of the old. *Roe* recognized sufficiency of knowledge is a function of time and although "at this point in the development of man's knowledge" (1973) the Court could not reach a conclusion, the decision is reserved for future review.

Here, this issue is before this Court, "in the first instance," and the only criteria for its disposition is the correctness of the Court's determination. The Court is in no sense bound by Roe's inability to determine this issue, and *stare decisis* is not, in the strict sense, applicable to this issue in this case. C.f., *Baker v. Carr*, 369 U.S. 186, 236-237 (1962); *Penna.-Reading, S.S. Lines v. Bd. of Pub. Utility Commrs.*, 5 N.J. 114, 121-124 (if facts, which form the basis for a constitutional principle, differ in a subsequent case, the first is not even precedent as to the second). The legal significance of the fact that the child is a human being experiencing pain was never before considered.

Casey calls for the nation to accept *Roe's* central holding in an effort to finally resolve a divisive national debate. But *Roe* itself *never made a ruling upon the central issue before it*, reserving it for future Courts. There can never be an acceptance of *Roe* until this Court decides these central issues and is able to explain, with conviction, that its decision is legally correct. It would constitute a "breach of faith" with the people of this nation, as well as to the very constitutional principles on which it is built, if the court left unaddressed the issue on which the entire debate turns. By refusing to answer the question of when life begins, *Roe* made nothing short of a promise that this court would answer that question when it could. It must now do so, correctly and with conviction.

"At this point in the development of man's knowledge" it is clear that a child is a complete, separate human being from conception (and surely long before "viability") (see pet., p. 18-35) and this fact renders *Roe's* analysis on the question of the child's rights irrelevant (see, pet., p. 11 to 17). These matters are left for this court and no interpretation of *stare decisis* absolves the court of the duty to resolve them.

B. EVEN IF PRINCIPLES OF *STARE DECISIS* WERE APPLICABLE TO THIS CASE, BECAUSE OF NEW FACTS AND NEW APPRECIATION OF OLD ONES, *STARE DECISIS* DOES NOT

PRECLUDE THE COURT FINDING THAT THE CHILD HAS CONSTITUTIONAL RIGHTS PRIOR TO BIRTH.

Casey described four principles of *stare decisis* which it felt precluded overruling *Roe*: (1) there is no change of fact; (2) *Roe* is not inconsistent with other principles of constitutional law; (3) reliance; and (4) workability. *Casey*, 112 S.Ct. at 2808-2812. All of these are satisfied in this case, on the issue of the child's rights.

1. New Facts and New Appreciation of Old Ones.

William O. Douglas, a member of the majority in *Roe*, wrote of *stare decisis*:

> [a] search for a static security - in the law - is misguided. The fact is that security can only be achieved through constant change, through the wise discarding of old ideas...and *through the adopting of others to current facts*. It is easy...to overemphasize *stare decisis* as a principle in the lives of men. ...*The difficulty is to estimate what effect a slightly different shade of facts will have*. (emphasis added) Douglas, William O., *Stare Decisis*, 49 Colum. L. Rev. 735-743, 735-736 (1949).

The new information now available on when the life of a child begins, and the fact that the child experiences pain as early as eight weeks after conception (see Pet. p. 18 to 35) is of particular significance.

First, once it is appreciated that the child is a human being who experiences pain before birth, *Roe*, itself, to be upheld would have to completely ignore prior holdings of the Court, and other

authorities. (see, Pet. p. 11 to 17; p. 35 to 47; p. 58-59, n. 87). If *Roe* itself ignored prior precedent it would be difficult to conceive of a justification to extend any precedental value in the *Roe* decision. To do so would frustrate *stare decisis* because a maverick opinion could change law without regard to the doctrine, and then subsequent courts would be bound by *stare decisis* to follow an opinion which originally ignored *stare decisis* principles.

Second, new facts or new appreciation of old ones are often the basis to overrule prior precedent. *Casey* found that there were no new facts on the issues before them concerning the state power to intrude in personal decisions of a woman (*Casey*, 112 S.Ct. at 2811-2812). Yet, *Casey* cited Justice Brandeis' dissenting opinion in *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 393, 405-413 with approval, that in many instances when the Court applies the Due Process Clause, the issue before the Court is a mixed question of fact and law, and the nature of the factual inquiry should not be obscured merely because it is a court that makes the determination. 285 U.S. at 410-411. Whether the child is a human being who enjoys constitutional rights is precisely such a mixed question (see, Pet., p. 15 to 17).

When this Court, in *Mapp v. Ohio*, 367 U.S. 643 (1961), overruled *Wolf v. Colarado*, 338 U.S. 25(1949), decided only twelve years earlier, the court based its ruling on a new appreciation of facts which made the "Exclusionary Rule" necessary. *Mapp* is an example of a case which applied the Due Process Clause and involved a mixed question of fact and law. The facts suggested the need for a particular method of implementation of a recognized right. In the strictest sense, abortion is a method of implementing an underlying privacy right. In *Baker v. Carr, supra*, in which the court overruled *Colegrove v. Green*, 328 U.S. 547 (1946), and distinguished *Colegrove v. Barrett*, 330 U.S. 804, the Court reasoned that new facts required the result.

In J.M., two ultimate facts must now be taken into consideration: this is indeed a human being from conception, and these children experience pain (Pet. p. 18 to 35). Both of these facts constitute a new appreciation of old ones. They dictate new recognition of the interests of the child and father, give rise to the child's rights, and impact upon the application of the Due Process Rights involved. *Burnet, supra*, (Brandeis, J. dissenting), 285 U.S. at 405-413. In addition, our experiences since *Roe*, because of new advances in contraception and the disappearance of social

stigma, renders abortion as an unnecessary method of implementation of the privacy interest sought to be protected, as well as one which unjusting impacts the child. C.f. *Mapp v. Ohio, supra*.

2. Whether *Roe* is in Conflict with Prior Precedent at Odds with Personal Liberties Depends Upon Whether the Child is a Human Being.

The *Casey* majority argued that *Roe* is not in conflict with prior precedent and does not influence developments at odds with personal liberties. This statement is incorrect when the child's humanity must be acknowledged. (see, petition of J.M. at p. 58 to 50, including n. 87).

Casey's suggestion would have to ignore the reality that before birth the child is a human being who experiences pain. *Roe*, conflicts with all law which seeks to protect the best interests of children and is tragicly fatal to children who suffer during abortion, as well as detrimental to many children who survive it. Before *Roe*, the New Jersey Supreme Court held that the child was a separate person whose life began at conception and had constitutional rights before birth. *Smith v. Brennan*, 157 A.2d 497, 504-505 (1960); *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*, 422 N.J. 421, 201 A.2d 537 (1964). This interpretation of New

Jersey law was recently affirmed in *Hummel v. Reiss*, 608 A.2d 1341, 1345-1346 (1992). *Smith v. Brennan*, and *Raleigh Fitkin* reflected New Jersey's strong policy for protecting life over its destruction. *Smith*, 31 N.J. at 364; *Raleigh Fitkin*, 422 N.J. at 423, 424. This policy, prior to *Roe*, resulted in protection of children from the harm and pain of abortions. See N.J.S.A. 2A:87-1. (To perform an abortion was a high misdemeanor which brought a penalty of fifteen years of incarceration. See *New Jersey v. Novak*, 121 A.2d 5 21 (1956); *New Jersey v. Sicilano*, 117 A.2d 490 (1956)). In refusing to recognize a tort action for the so called "wrongful birth" claims the New Jersey Supreme Court eloquently explained the public policy of New Jersey against abortion:

> It is basic to the human condition to seek life and hold on to it however, heavily burdened. ...the right to life is inalienable in our society. ...we are not faced here with the necessity of balancing a mother's life against that of a child. The sanctity of a single human life is the decisive factor ...(that) it may have been easier for the mother and less expensive for the father to terminate the life of the child while he was an embryo, but these alleged determinants cannot stand against the preciousness of a single human life ... *Gleitman v. Cosgrove*, 227 A.2d 689 (1967).

Roe required New Jersey to abandon its policy of protecting the lives of children. In 1979, even when *Roe* compelled New Jersey

to recognize the wrongful birth cause of action, its Supreme Court noted:

> One of the most deeply held beliefs of our society is that life ... is more precious than nonlife (citation omitted) ... concrete manifestations of this belief are not difficult to discover. Documents which set forth principles upon which our society are founded are replete with references to the *sanctity of life*. The federal constitution characterizes *life as one of the three fundamental rights* of which no one can be deprived without due process of law ... our own constitution proclaims that the 'enjoyment and defending of life' is a natural rights. N.J. CONST. (1947), ART. I, SEC. I. The declaration of independence states that the primacy of man's 'unalienable' right to life is a 'self-evident truth'. Nowhere in these documents is there to be found an indication that the life of persons suffering from handicaps are to be less cherished than those non-handicapped human beings. *Berman v. Allan*, 80 N.J. 421, 429, 404 A.2d 8 (1979).

The harm created by *Roe* is quite evident when the Court recognizes that the unborn child is a human being. Law that was carefully developed to protect innocent lives was swept away because the Court has failed to acknowledge that these were persons in fact. For the children who are not aborted, *Roe* is often cruel. New Jersey now feels compelled to tell children that doctors who fail to inform their parents that the child may be born with a handicap, must pay large sums of money to their parents because their parents lost an opportunity to terminate their lives. (See *Berman v. Allan*, 80 N.J. 420 (1979); *Procanik v. Cillo*, 97 N.J.

339, 478 A.2d 755 (1984). That these children must live with this knowledge is harm fostered by *Roe*.

A father has no right to demand an abortion, nor should he. His embarrassment, hardship, or distress that flow from an unplanned pregnancy, whether he is prepared to rear or support the child, is irrelevant to whether society should extend him the "right" to take the child's life. However, where the right he seeks to enforce is one consistent with the child's best interest, the same statute that imposes obligations upon him based upon the single act of conception, extends to him the right to affirmatively choose to discharge his obligations through custody or visitation and support. Likewise, under the adoption statutes, a judgment of adoption cannot be entered against the natural father over his objection, unless there is a specific finding of abandonment or neglect. N.J.S.A. 9:3-46. The right of a natural father who is not married to the mother is based solely upon his status as genetic father. See *In re Adoption of a Child by J.R.D.*, 246 N.J. Super. 619 (Ch.Div.1990).

The issue can be framed in different ways. *Casey* may choose to frame the issue as a father blocking the mother's right to take the life of her own child. More to the point is that what V.C.

proposes is that the father's enjoyment of the benfits of his relationship with his child, his fundamental constitutional rights, can be entrusted to another who could arbitrarily destroy a relationship with his child for any reason.

Building on *Roe*, *Casey* found that although a father's constitutional rights and those of a mother are "equal" after birth the mother's can destroy those of a father before built. *Casey*, 112 S.Ct. at 2830. This may be the consequence of *Roe*, but it is drastically in conflict with precedent dealing with the equal protection of the laws. See *Craig v. Boren*, 429 U.S. 190 (1976); *Califano v. Goldfarb*, 430 U.S. 199, (1977); (gender based classifications require at least an interemediate level of scrutiny; strict scrutiny if there is a denial of a fundamental right[2]).

Under the New Jersey parentage act N.J.S.A. 9:17-40 et seq. the obligations of J.M. as father are derived from the fact of conception alone. The birth is the natural consequence of the conception.

If the fundamental constitutional right of the father is implicated, then the creation of a classification extending exclusive decision

[2] *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969); *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

making power to the mother violates equal protection, because there would be no compelling interest of the State. *Shaprio, supra*; *Baker, supra*. If his constitutional rights are not fundamental, the classification created is gender based, requiring intermediate scrutiny. *Craig v. Boren*, 429 U.S. 190 397 (1976). As a result, the State classification must serve important governmental objectives and must be substantially related to the achievement of the objectives. The objective here is to protect the right of the mother to participate in making decisions about whether she should have children. See *Roe*, 410 U.S. at 153. That objective is already served. Once the mother conceives, she aleady has a child. The inconvenience of the mother in carrying the child, although real and substantial, can never outweigh the child's interest in life.

3. Given the Fact that the Child is a Human Being, the Principles of Reliance (and Workability) Has no Application.

Casey states the fact that some segments of our society have relied upon the court's prior holding in *Roe* requires affirmance, *Casey*, 112 S.Ct. at 2809, even if it cannot assert that it was correctly decided in the first instance. 112 S.Ct. at 2817.

By *Casey's* own calculation, the last case before this Court which required it to determine an issue of the magnitude of those

in the J.M. case, was *Brown v. Bd. of Ed. of Topeka*, 347 U.S., 483 (1954). *Casey*, 112 S.Ct. at 2814-2815. The irony of *Casey's* discussion of reliance is in the fact it was the very argument of those who sought in *Brown* to perpetuate racial segregation by affirmance of *Plessy v. Ferguson*, 163 U.S. 537 (1896). The reliance argument found in *Casey* is indistinguishable from the reliance argument of the four states seeking to preserve segregation in the consolidated cases that are universally known as *Brown v. Bd. of Ed.*[3]

Invoking the premise that longstanding principles which have been continually relied upon should be left unchanged, John W. Davis argued in *Briggs, supra*, that "somewhere, sometime to every principle comes a moment of repose when it has been so often announced, so confidently relied upon, so long continued, that it passes the limits of judicial discretion and disturbance." 49A

[3] The *Brown* case was actually a grouping of four segregation cases decided together. The accompanying cases were *Briggs v. Elliott*, *Davis v. County School Board of Prince Edward County, VA*, and *Gebhart v. Belton*. These cases concerned various statutes pertaining to school segregation in the respective states of Kansas, South Carolina, Virginia, and Delaware. Although it was decided separately, *Bolling v. Sharpe*, 347 U.S. 497 (1954) was also argued with *Brown*. The initial oral argument for these cases occurred before the United States Supreme Court on December 9-11, 1952, while the Court was presided over by Chief Justice Vinson. The cases were subsequently reargued, upon the request of the Court, on December 7-9, 1953, with Earl Warren having succeeded Mr. Vinson as Chief Justice.

Landmark Briefs at 490. Davis asserted that the South Carolina statute must stand because:

> [w]e *relied* on the facts that this Court had, not once but seven times, ... pronounced in favor of the "separate but equal" doctrine. We *relied* on the fact that the courts of last appeal in some sixteen or eighteen states have passed upon the validity of the "separate but equal" doctrine vis-a-vis the Fourteenth Amendment. We *relied* on the fact that Congress has continuously since 1862 segregated its schools in the District of Columbia. Id. (Emphasis added).

Indeed, it was the theme of all of the States that desegregation was contrary to longstanding customs and traditions which were "deeply ingrained", the disturbance of which would cause such dire consequence that on those grounds alone *Plessy* had to be affirmed. See, J. Lindsay Almond, id. at 383-384; 512-513; Kansas, id. at 752; Davis, id. at 490-491; T. Justin More, Id. a 407; 510-511; *Casey* observed:

> While we think *Plessy* was wrong the day it was decided, (citation omitted), we must also recognize that the *Plessy* court's explanation for its decision was so clearly at odds with the facts apparent to the court in 1954 that the decision to examine *Plessy* was on this ground alone not only justified but required. *Casey*, 112 S.Ct. at 2813.

This statement is pertinent in the J.M. case because, whether or not the *Roe* court believed that it could not determine when the life of a human being began, no one could, in light of the present evidence, dispute that the biological life of a complete, separate

and individual human being begins at conception. The court likens *Brown* to *Roe*, but *Roe* more resembles *Plessy* than it resembles *Brown*. The *Brown* case more resembles J.M. *Roe* simply does not possess the moral force of *Brown*. *Brown* corrected a wrong. *Roe* created one.

The Court should grant certiorari in this case with no fear that overruling *Roe* would be any more difficult to implement than *Brown* was, and no harder for the public to accept. When it is understood that these children are human beings, who experience pain and that the premise of this nation is that the life of every human being has value, and that each one of us is unique and irreplaceable, an acceptance of overturning *Roe* will follow, if overruling it is.

CONCLUSION

Because *Roe* did not determine the central issues presented by this case, and the principles of *stare decisis*, as applied to this case, do not otherwise preclude overruling *Roe*, the Court should grant a writ of certiorari in this case.

Calum B Anderson

CALUM B. ANDERSON, ESQ.